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 (by and through the California Highway
 Patrol) and Sergio Flores*

**IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

JACOB GREGOIRE,

 Plaintiff,

 v.

 CALIFORNIA HIGHWAY PATROL,
 an agency of the State of California;
 SERGIO FLORES, and DOES 1 to 20,

 Defendants.

Case No.: 14-cv-01749-GPC (DHB)

**DEFENDANTS' OBJECTIONS TO
 PLAINTIFF'S EVIDENCE
 OFFERED IN SUPPORT OF
 PLAINTIFF'S OPPOSITION TO
 DEFENDANTS' MOTION FOR
 SUMMARY JUDGMENT**

Date: February 19, 2016
 Time: 1:30 p.m.
 Courtroom: 2D
 Judge: The Honorable Gonzalo P.
 Curiel

I. DECLARATION OF ROGER CLARK

The Declaration of Roger Clark was filed under seal. ECF Docs. 39 & 40. Therefore, the specific testimony or document at issue will not be quoted below; rather, it will be cited by page, line numbers, and exhibit numbers. As noted in the Defendants' Reply Memorandum, all of Clark's opinions are insufficient to create a genuine issue of material fact on the officers' conclusions at the scene as to the

reasonableness of their conduct. *City and County of San Francisco v. Sheehan*, ___ U.S. ___, 135 S. Ct. 1765, 1777 (2015); *Billington v. Smith*, 292 F.3d 1177, 1189 (9th Cir. 2002).

TESTIMONY/ DOCUMENT	OBJECTIONS
1. Clark Decl., p. 3, lns. 8-11 and entirety of Exhibit 1 to Clark Decl.	1(a) Clark's cited information and Exhibit 1 are irrelevant. Fed. R. Evid. 401 & 402. ____ Sustained ____ Overruled
	1(b) Clark's cited information and Exhibit 1 constitute improper character evidence. Fed. R. Evid. 404(a) & (b); <i>Hudson v. Dist. Of Columbia</i> , 558 F.3d 526, 532 (D.C. Cir. 2009). ____ Sustained ____ Overruled
	1(c) Material is inadmissible hearsay, and expert witness cannot serve as backdoor conduit to admit such hearsay. Fed. R. Evid. 801 & 802; <i>Paddock v. Dave Christensen, Inc.</i> , 745 F.2d 1254, 1261-1262 (9th Cir. 1984); <i>Finchum v. Ford Motor Co.</i> , 57 F.3d 526, 533 (7th Cir. 1995). ____ Sustained ____ Overruled
2. Information in Clark Decl., p. 3, lns. 12-13. No document is attached, but, even it was, it would be subject to same objections as the cited information.	2(a) Irrelevant. Fed. R. Evid. 401 & 402. ____ Sustained ____ Overruled
	2(b) Improper character evidence. Fed. R. Evid. 404(a) & (b); <i>Hudson v. Dist. Of Columbia</i> , 558 F.3d 526, 532 (D.C. Cir. 2009). ____ Sustained ____ Overruled

TESTIMONY/ DOCUMENT	OBJECTIONS
	<p>2(c) The material is inadmissible hearsay, and expert witness cannot serve as backdoor conduit to admit such hearsay. Fed. R. Evid. 801 & 802; <i>Paddock v. Dave Christensen, Inc.</i>, 745 F.2d 1254, 1261-1262 (9th Cir. 1984); <i>Finchum v. Ford Motor Co.</i>, 57 F.3d 526, 533 (7th Cir. 1995).</p> <p>____ Sustained</p> <p>____ Overruled</p>
<p>3. All information referenced by Clark on page 3, lines 17-28 and page 4, lines 1-2; also, all documents attached as Exhibit 2 to Clark Decl.</p>	<p>3(a) Clark's cited information and all of Exhibit 2 are irrelevant. Fed. R. Evid. 401 & 402.</p> <p>____ Sustained</p> <p>____ Overruled</p>
	<p>3(b) Clark's cited information and all of Exhibit 2 are improper character evidence. Fed. R. Evid. 404(a) & (b); <i>Hudson v. Dist. Of Columbia</i>, 558 F.3d 526, 532 (D.C. Cir. 2009)</p> <p>____ Sustained</p> <p>____ Overruled</p>
	<p>3(c) The material is inadmissible hearsay, and expert witness cannot serve as backdoor conduit to admit such hearsay. <i>Paddock v. Dave Christensen, Inc.</i>, 745 F.2d 1254, 1261-1262 (9th Cir. 1984); <i>Finchum v. Ford Motor Co.</i>, 57 F.3d 526, 533 (7th Cir. 1995).</p> <p>____ Sustained</p> <p>____ Overruled</p>

TESTIMONY/ DOCUMENT	OBJECTIONS
4. Clark's opinion at page 4, lines 3-4.	<p>4(a) This is a new opinion not previously disclosed. Fed. R. Civ. Proc. 37(c)¹. Therefore, there was no prior opportunity to raise <i>Daubert</i> objections prior to these objections. Improper expert opinion. Fed. R. Evid. 702 & 703; <i>Daubert v. Merrell Dow Pharmaceuticals, Inc.</i>, 509 U.S. 579, 590 (1993); <i>Guidroz-Boult v. Missouri Pacific R. Co.</i>, 254 F.3d 825, 829 (9th Cir. 2001); based on speculation and conjecture; lacks foundation and reliability; Clark lacks qualifications and factual predicates to render the opinion.</p> <p>____ Sustained</p> <p>____ Overruled</p> <p>4(b) Improper character evidence. Fed. R. Evid. 404(a) & (b); <i>Hudson v. Dist. Of Columbia</i>, 558 F.3d 526, 532 (D.C. Cir. 2009).</p> <p>____ Sustained</p> <p>____ Overruled</p> <p>4(c) Irrelevant. Fed. R. Evid. 401 & 402.</p> <p>____ Sustained</p> <p>____ Overruled</p>
5. Clark's opinions in paragraph 10 of his declaration regarding scene danger and patient care.	<p>5. Irrelevant. Fed. R. Evid. 401 & 402; <i>City and County of San Francisco v. Sheehan</i>, ___ U.S. ___, 135 S. Ct. 1765, 1777 (2015); <i>Billington v. Smith</i>, 292 F.3d 1177, 1189 (9th Cir. 2002); lacks foundation; Clark is no more qualified than officers on scene to make this assessment and his after-the-fact assessment does not create genuine dispute as to the reasonableness of their conclusions at the time.</p> <p>____ Sustained</p> <p>____ Overruled</p>

¹ Defendants reserve all Rule 37(c) objections to new opinions offered in Mr. Clark's declarations.

TESTIMONY/ DOCUMENT	OBJECTIONS
<p>6. Clark's opinion in paragraph 11 of his declaration.</p>	<p>6(a) Irrelevant. Fed. R. Evid. 401 & 402; <i>City and County of San Francisco v. Sheehan</i>, ___ U.S. ___, 135 S. Ct. 1765, 1777 (2015); <i>Billington v. Smith</i>, 292 F.3d 1177, 1189 (9th Cir. 2002); lacks foundation; Clark is no more qualified than officers on scene to make this assessment and his after-the-fact opinion does not create genuine dispute as to the reasonableness of their conclusions at the time.</p> <p>____ Sustained</p> <p>____ Overruled</p> <p>6(b) Improper legal conclusion. <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i>, 523 F.3d 1051, 1058 & 1059 (9th Cir. 2008).</p> <p>____ Sustained</p> <p>____ Overruled</p>
<p>7. Clark's opinion in paragraph 12 of his declaration.</p>	<p>7(a) Improper expert opinion. Fed. R. Evid. 702 & 703; <i>Daubert v. Merrell Dow Pharmaceuticals, Inc.</i>, 509 U.S. 579, 590 (1993); <i>Guidroz-Boult v. Missouri Pacific R. Co.</i>, 254 F.3d 825, 829 (9th Cir. 2001); based on speculation and conjecture; lacks foundation and reliability</p> <p>____ Sustained</p> <p>____ Overruled</p> <p>7(b) Irrelevant. Fed. R. Evid. 401 & 402; <i>City and County of San Francisco v. Sheehan</i>, ___ U.S. ___, 135 S. Ct. 1765, 1777 (2015); <i>Billington v. Smith</i>, 292 F.3d 1177, 1189 (9th Cir. 2002); also irrelevant because overbroad and lacks foundation; generalized opinion not specific to any circumstances; incomplete hypothetical.</p> <p>____ Sustained</p> <p>____ Overruled</p>

TESTIMONY/ DOCUMENT	OBJECTIONS
8. Clark's opinion in paragraph 13 of his declaration.	<p>8 Improper legal conclusion. <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i>, 523 F.3d 1051, 1058 & 1059 (9th Cir. 2008); also irrelevant (Fed. R. Evid. 401 & 402) because overbroad and lacks foundation; generalized opinion not specific to any circumstances; incomplete hypothetical.</p> <p>____ Sustained</p> <p>____ Overruled</p>
9. Clark's opinions in paragraph 14 and 15 regarding whether truck should be moved, protection priorities, and scene issues.	<p>9 Irrelevant. Fed. R. Evid. 401 & 402; <i>City and County of San Francisco v. Sheehan</i>, ___ U.S. ___, 135 S. Ct. 1765, 1777 (2015); <i>Billington v. Smith</i>, 292 F.3d 1177, 1189 (9th Cir. 2002); lacks foundation; Clark is no more qualified than officers on scene to make this assessment and his after-the-fact opinion does not create genuine dispute as to the reasonableness of their conclusions at the time.</p> <p>____ Sustained</p> <p>____ Overruled</p>
10. All factual information relayed by Clark in paragraphs 10, 14-20 of his declaration.	<p>10(a) The material is inadmissible hearsay, and expert witness cannot serve as backdoor conduit to admit such hearsay. <i>Paddock v. Dave Christensen, Inc.</i>, 745 F.2d 1254, 1261-1262 (9th Cir. 1984); <i>Finchum v. Ford Motor Co.</i>, 57 F.3d 526, 533 (7th Cir. 1995).</p> <p>____ Sustained</p> <p>____ Overruled.</p>
	<p>10(b) Clark lacks personal knowledge. Fed. R. Evid. 602; Fed. R. Civ. Proc. 56(c)(4).</p> <p>____ Sustained</p> <p>____ Overruled.</p>

TESTIMONY/ DOCUMENT	OBJECTIONS
11. Clark's opinions in paragraphs 18 - 20.	<p>11. Irrelevant. Fed. R. Evid. 401 & 402; <i>City and County of San Francisco v. Sheehan</i>, ___ U.S. ___, 135 S. Ct. 1765, 1777 (2015); <i>Billington v. Smith</i>, 292 F.3d 1177, 1189 (9th Cir. 2002); lacks foundation; Clark is no more qualified than officers on scene to make this assessment and his after-the-fact opinion does not create genuine dispute as to the reasonableness of their conclusions at the time.</p> <p>____ Sustained</p> <p>____ Overruled</p>
12. Clark's information in paragraphs 21 – 24.	<p>12(a) Irrelevant. Fed. R. Evid. 401 & 402; see <i>Michigan v. DeFillipo</i>, 443 U.S. 31, 36 (1979).</p> <p>____ Sustained</p> <p>____ Overruled.</p>
	<p>12(b) The material is inadmissible hearsay, and expert witness cannot serve as backdoor conduit to admit such hearsay. <i>Paddock v. Dave Christensen, Inc.</i>, 745 F.2d 1254, 1261-1262 (9th Cir. 1984); <i>Finchum v. Ford Motor Co.</i>, 57 F.3d 526, 533 (7th Cir. 1995).</p> <p>____ Sustained</p> <p>____ Overruled.</p>
	<p>12(c) Clark lacks personal knowledge. Fed. R. Evid. 602; Fed. R. Civ. Proc. 56(c)(4).</p> <p>____ Sustained</p> <p>____ Overruled.</p>

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II. Justin Hutton Declaration

TESTIMONY/ DOCUMENT	OBJECTIONS
1. Hutton Decl., p. 7, lns. 12-13: "The Latino CHP officer never consulted with any firemen or EMTs about the status of patient care before affecting this arrest."	1 Lacks foundation, insufficient facts to show personal knowledge of what CHP officers did during entirety of incident. Fed. R. Evid. 602; Fed. R. Civ. Proc. 56(c)(4). ____ Sustained ____ Overruled
2. Hutton Decl., p. 2, ¶ 9, lns. 24-25: "I have been an EMT for three years and estimate that I have been on hundreds of calls and have never seen anything like this before."	2. Irrelevant. Fed. R. Evid. 401 & 402. ____ Sustained ____ Overruled

III. Joshua Rees Declaration

TESTIMONY/ DOCUMENT	OBJECTIONS
1. Rees Decl., p. 2, ¶ 6: "I was shocked to see this occur. I have been a Firefighter/Emergency Medical Technician for over 15 years and been to over 400 similar injury calls and have never seen a peace officer obstruct and delay patient care like the officer who	1 Irrelevant. Fed. R. Evid. 401 & 402. ____ Sustained ____ Overruled

TESTIMONY/ DOCUMENT	OBJECTIONS
arrested Jacob Gregoire.”	
2. Rees Decl., p. 2, ¶ 7, lns. 17-18: “The patient himself stated, ‘Are you going to fucking leave me here? Are you?’”	2(a) Irrelevant. Fed. R. Evid. 401 & 402. ____ Sustained ____ Overruled
	2(b) Inadmissible hearsay. Fed. R. Evid. 801 & 802. ____ Sustained ____ Overruled
3. Rees Decl., p. 2, ¶ 7, lns. 20-22: “Equally troubling was the fact that the CHP officer never consulted with any of the paramedics or firefighters/EMTs prior to arresting Jake Gregoire.”	3. Lacks foundation, insufficient facts to show personal knowledge of what CHP officers did during entirety of incident. Fed. R. Evid. 602; Fed. R. Civ. Proc. 56(c)(4). ____ Sustained ____ Overruled

Dated: February 2, 2016

Respectfully submitted,

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s/DOUGLAS E. BAXTER
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